

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 1-08-48275-ess

4 Adv. Case No. 1-17-01085-ess

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6 In the Matter of:

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8 HILAL KHALIL HOMAIDAN,

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10 Debtor.

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12 HOMAIDEN et al.,

13 Plaintiffs,

14 v.

15 SALLIE MAE, INC., et al.,

16 Defendants.

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1 United States Bankruptcy Court  
2 271-C Cadman Plaza East  
3 Brooklyn, NY 11201  
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5 May 7, 2020  
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21 B E F O R E :  
22 HON ELIZABETH S. STONG  
23 U.S. BANKRUPTCY JUDGE  
24

25 ECRO: UNKNOWN

1 returns for these loans, that is completely inconsistent  
2 with the theory that's been alleged that they were just  
3 ordinary consumer debt that was dischargeable in bankruptcy.  
4 And there's law out there that says that if they take a tax  
5 deduction based on one theory, they can't come in and argue  
6 dischargeability on an inconsistent theory, so you've got  
7 individualized questions surrounding that.

8 And when you put the --

9 THE COURT: And how is that question affect  
10 whether or not a tuition answer loan is the center outside  
11 of 523(a)(8)?

12 MR. FARRELL: It doesn't --

13 THE COURT: I don't -- those are lots of  
14 consequences, but I don't -- it seems to me that the  
15 predominant -- and I don't mean to be -- I'm not invoking a  
16 term of art here. I'm trying to use an adjective. That a  
17 big question here is whether these loans are or are not  
18 within the applicable subsection of 523(a)(8).

19 And that seems to me to be, at least potentially,  
20 a significant disagreement between the parties, a  
21 significant common question of law. Certification, as I  
22 understand the law, does not mean that every member of the  
23 class must be a clone of every other member of the class.  
24 It simply means that there needs to be a sufficient common -  
25 - there needs to be common questions of law or fact that are

1 usefully addressed through the collective tool of a  
2 certified class action.

3 MR. FARRELL: I agree with that statement as an  
4 abstract legal principle, Your Honor, clearly. But what I'm  
5 trying to articulate is -- and my estoppel based on tax  
6 return argument obviously wasn't intended to be the driving  
7 force here, but it's just another example in the long list.  
8 And when you put it all together, again, the mosaic here is  
9 that the individualized questions predominate.

10 And to Your Honor's point that, you know, the -- I  
11 can't remember exactly how you phrased it -- but the big  
12 issue here is, are these loans dischargeable or not. You  
13 know, that in and of itself under their theory, under the  
14 plaintiffs' theory, hinges on the question of whether the  
15 dollar amount of the loan was one penny or more over the  
16 cost to attend. It's not the only part of the liability  
17 test, but it's a key step in their liability process. And  
18 what I'm trying to articulate is that even that step is not  
19 answerable based on any common class-wide proof. It  
20 requires knowing what the individual student's determination  
21 was.

22 THE COURT: But, Mr. Farrell, are the defendants  
23 prepared to stipulate that if the amount of the loan is more  
24 than the cost of attendance, then it is non-dischargeable?

25 MR. FARRELL: No.

1 THE COURT: I'm sorry. I'm sorry. Then it is  
2 dischargeable; it is not non-dischargeable -- pardon the  
3 double negative, to quote your brief.

4 MR. FARRELL: No.

5 THE COURT: I don't think so. And precisely that  
6 seems to me to be one of the central questions here. What  
7 it means for Jane or Joe or Hilal or Reham or anyone else  
8 who's an alleged or turns out to be, in fact, a member of  
9 this class if the class is certified is different. But  
10 until the defendants are prepared to say, well, that legal  
11 issue was not disputed, it seems to me there is at least  
12 quite potentially a significant common question of law that  
13 unites the individual -- and, yes, unique, not clone --  
14 members of the alleged class as defined by the factual  
15 parameters, not the legal conclusions that are alleged in  
16 the amended complaint. That's what I'm struggling with.

17 MR. FARRELL: Your Honor --

18 THE COURT: And every time you move to the  
19 individual issues, it seems to me that you're leapfrogging a  
20 couple of big predicate issues that are common and could  
21 well be better addressed once than 38,000 or even 30,000  
22 times in the, you know, 94 bankruptcy courts with 300-and-  
23 some-odd judges around the country.

24 MR. FARRELL: Your Honor, and I apologize if I'm  
25 not being clear.